

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, October 12, 2016
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

1. [16-12501](#)-B-7 JOHN/ANNA GASTON MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 9-7-16 [[18](#)]
DARLENE VIGIL/Atty. for mv.

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

2. [16-12025](#)-B-7 KAREN STILLWELL MOTION FOR RELIEF FROM
ETL-1 AUTOMATIC STAY
U.S. BANK NATIONAL 9-13-16 [[28](#)]
ASSOCIATION/MV
ERICA LOFTIS/Atty. for mv.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

3. [16-13126](#)-B-7 NTS, INC. MOTION FOR RELIEF FROM
DLN-1 AUTOMATIC STAY
PATRIOT ENVIRONMENTAL 9-14-16 [[9](#)]
SERVICES, INC./MV
T. BELDEN/Atty. for dbt.
DAVID NEALE/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

4. [11-60233](#)-B-7 MICHAEL NORMAN TRUSTEE'S FINAL REPORT
JES-2 8-5-16 [[58](#)]
OVIDIO OVIEDO/Atty. for dbt.

The motion will be granted in part and denied in part without oral argument based upon well-pled facts. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The fees and costs are granted except for the amount of \$42.85 in costs that represent ordinary overhead.

5. [16-12646](#)-B-7 PERRY CROUCH
RJP-1
PERRY CROUCH/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO REDEEM
9-8-16 [[22](#)]

Unless this motion is withdrawn prior to the continued hearing, it will be continued to November 16, 2016, at 9:30 a.m., for submission of further evidence to be filed by November 2, 2016. Any reply by respondent is due by November 9, 2016. No appearance is necessary.

The debtor filed this motion in an attempt to redeem, for a payment of \$3,268, his 2007 Toyota Yaris, for which the record shows he owes \$14,503. Neither the debtor's motion nor the record shows that he complied with all the requirements necessary to redeem personal property.

The debtor's Statement of Intent, filed within 30 days after the petition or meeting of creditors, listed "Retain the property and continue to make payments" as his intent regarding this property. Even if that statement had reflected an intent to redeem, there is nothing to show that it was served on the creditor on or before filing of the Statement, in compliance with FRBP 1007(b)(2).

6. [16-12646](#)-B-7 PERRY CROUCH
RJP-2
PERRY CROUCH/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
9-8-16 [[17](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

7. [15-14950](#)-B-7 JOSE/LUCY VILLA
APN-1
SANTANDER CONSUMER USA INC./MV
ERIC ESCAMILLA/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-1-16 [[43](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The debtors are individuals. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

8. [16-12758](#)-B-7 GEORGE/GERALDINE MOWREY
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
MARK ZIMMERMAN/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-23-16 [[17](#)]

This motion for relief from the automatic stay will be denied as moot. The debtors have filed a notice of non-opposition. No appearance is necessary.

The debtors are individuals. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

9. [16-11661](#)-B-7 BRUCE/CAROL MAHLMANN
TMT-1
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
9-13-16 [[16](#)]

JAMES MILLER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

10. [15-10362](#)-B-7 RDD RACEWAY HOBBIES INC.
MKK-2
M. KLEIN/MV
VARDUHI PETROSYAN/Atty. for dbt.

MOTION FOR COMPENSATION FOR M.
KATHLEEN KLEIN, ACCOUNTANT(S)
9-8-16 [[34](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11. [15-12668](#)-B-7 JOHN/JULIE KENT
RWR-3
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THE
SHERMAN-WILLIAMS COMPANY
9-13-16 [[31](#)]

PETER BUNTING/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The record shows that the trustee considered the standard set forth in A & C Properties and it appears that the factors for a fair and equitable settlement under that standard have been met.

12. [14-10282](#)-B-7 DELIA RUIZ
PFC-1
PETER FEAR/MV

MOTION FOR COMPENSATION FOR
PETER L. FEAR, CHAPTER 7
TRUSTEE(S)
9-15-16 [[77](#)]

MARK ZIMMERMAN/Atty. for dbt.
PETER FEAR/Atty. for mv.

This matter will proceed as scheduled.

13. [16-12993](#)-B-7 CHEVONNE PERRY
CJO-1
NAVY FEDERAL CREDIT UNION/MV
ASHTON DUNN/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-21-16 [[10](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtor's default and grant the motion for relief from stay.

The automatic stay will be terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

14. [16-12296](#)-B-7 CHRISTOPHER MCCUIEN AND MOTION TO DISMISS CASE PURSUANT
UST-1 KARI PADEN TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 9-2-16 [[20](#)]
GRACE JOHNSON/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

The motion will be granted based on well-pled facts without oral argument. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The debtors shall have 14 days from the date of this hearing to convert this case to chapter 13. The debtors are authorized to convert the case by ex parte application. The U.S. Trustee shall submit an order dismissing this case if it has not been converted within 14 days.

15. [14-14998](#)-B-7 SILARDO/OLIVIA CHAVANA TRUSTEE'S FINAL REPORT
JES-4 7-19-16 [[135](#)]
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

The motion will be granted in part and denied in part without oral argument based upon well-pled facts. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The fees and costs are granted except for the amount of \$42.85 in costs that represent ordinary overhead.

16. [16-13298](#)-B-7 JUAN OROZCO CHAVEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-23-16 [[16](#)]

PARTIAL FILING FEE PAYMENT
OF \$20.00 PAID 9/26/16

Unless the fee still owing is paid prior to the hearing, this matter will proceed as scheduled.

11:00 A.M.

1. [16-12601](#)-B-7 RUDY/GUADALUPE MARTINEZ PRO SE REAFFIRMATION AGREEMENT
WITH GOLDEN 1 CREDIT UNION
9-19-16 [[16](#)]

This matter will proceed as scheduled.

2. [16-12683](#)-B-7 JESSE/BERTA IBEA REAFFIRMATION AGREEMENT WITH
CAB WEST, LLC
8-23-16 [[9](#)]

GABRIEL WADDELL/Atty. for dbt.

This reaffirmation agreement will be dropped from calendar without a disposition. Debtors' counsel will inform debtors that no appearance is necessary.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed July 26, 2016, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.

3. [16-12888](#)-B-7 EVELYN RAMIREZ PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
9-13-16 [[23](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [15-14225](#)-B-7 LETICIA CAMACHO STATUS CONFERENCE RE: COMPLAINT
[16-1084](#)
CAMACHO V. GARCIA ET AL 8-11-16 [[1](#)]
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING

This matter will be dropped from calendar. It appears from the plaintiff's status report and the record that three of the defendants' defaults have been entered and a motion for court approval of the settlement agreement with a fourth defendant will be filed. The plaintiff is to proceed with setting a prove-up motion for default judgment under the ordinary procedures.

WT Capital Lender Services, the remaining defendant in this adversary proceeding, is the agent for the trustee under the deed of trust and filed a "Declaration of Nonmonetary Status" under Cal. Civ. C. § 2924(c) on August 30, 2015. No objection having been filed to this response within the 15 days permitted by law, the court will apply Cal. Civ. C. § 2924(c) whereby WT Capital Lender Services will be bound by whatever nonmonetary order or judgment is issued by this Court regarding the subject deed of trust.

2. [15-14228](#)-B-13 OSCAR GUTIERREZ STATUS CONFERENCE RE: COMPLAINT
[16-1085](#)
GUTIERREZ V. GARCIA ET AL 8-11-16 [[1](#)]
GLEN GATES/Atty. for pl.

This matter will be dropped from calendar. It appears from the plaintiff's status report and the record that three of the defendants' defaults have been entered and a motion for court approval of the settlement agreement with a fourth defendant will be filed. The plaintiff is to proceed with setting a prove-up motion for default judgment under the ordinary procedures.

WT Capital Lender Services, the remaining defendant in this adversary proceeding, is the agent for the trustee under the deed of trust and filed a "Declaration of Nonmonetary Status" under Cal. Civ. C. § 2924(c) on August 30, 2015. No objection having been filed to this response within the 15 days permitted by law, the court will apply Cal. Civ. C. § 2924(c) whereby WT Capital Lender Services will be bound by whatever nonmonetary order or judgment is issued by this Court regarding the subject deed of trust.

3. [15-11935](#)-B-7 LEROY WEBER
[15-1100](#)
GREAT AMERICAN INSURANCE
COMPANY V. WEBER
JAMES STANLEY/Atty. for pl.
DISMISSED, ADVERSARY CLOSED

PRETRIAL CONFERENCE RE:
COMPLAINT
8-7-15 [[1](#)]

This matter will be dropped from calendar. It appears that this adversary proceeding has been settled by stipulation of the parties and order of the court and has already been closed.